IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

CRP.No. 845 of 2004(C)

EP 805/03 IN OS.988/1989 of PRL.MUNSIFF COURT,THRISSUR

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REVN. PETITIONER/RESPONDENT/JUDGMENT DEBTOR

DEVASSY, S/O.MANIPARAMBIL LATE
MICHAEL, ARIMBUR DESOM, PARAKKAD VILLAGE,
THRISSUR TALUK.

BY ADV. SRI.JIJO PAUL

RESPONDENT/PETITIONER/DECREE HOLDER

KOCHANNAM, D/O.PANIKKATHARA
PORINCHU AND W/O.PADIKKALA KOCHAPPAU,
ARIMBUR DESOM, PARAKKAD VILLAGE, THRISSUR
TALUK.

BY ADV. SRI.DINESH MATHEW J.MURICKEN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 25/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.NO.2025 OF 2004 IN C.R.P. NO.845 OF 2004

DISMISSED

25.5.2007 SD/- PIUS C.KURIAKOSE, JUDGE.

PIUS C. KURIAKOSE,J.

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C.R.P.No.845 of 2004

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Dated: 25th May, 2007

ORDER

The order of the executing court directing the Amin to demolish portions of a construction put up by the revision petitioner-judgment-debtor in execution of a decree for fixation of boundaries and for prohibitory and mandatory injunction is under challenge. The decree passed by the trial court was confirmed in appeal by the District Court and by this court also in S.A.No.451/01. Ext.C2(a) sketch prepared by the Advocate Commissioner appointed on the trial side with the assistance of the surveyor was incorporated as part of the decree by the first appellate court. Under the impugned order the execution court while directing the Amin to demolish the offending constructions has also appointed an Advocate Commissioner to supervise the operation. The Advocate Commissioner was directed to act on the basis of Ext.C2 Commissioner's report and Ext.C2(a) sketch for the purpose of removing the encroachment.

2. Mr.Jijo Paul, learned counsel for the petitioner submitted that it was beyond the powers of the execution court to have directed the Commissioner and the Amin to rely on Ext.C2 Commissioner's report which is not part of the decree. Counsel however conceded that if

Ext.C2 is also relied on, it may be possible to identify the offending constructions correctly. The remedy of the decree-holder, according to the counsel, will be to apply for amendment of the decree.

3. Mr.Dinesh Mathew J.Murickan, learned counsel for the respondent would place strong reliance on the judgment of this court in **Kunju Kunju Chandran v. Raghavan** (2005(3) KLT 644) and submit that for construing a decree the execution court can and in appropriate cases, it ought to take into consideration even the pleadings and the proceedings which lead upto the decree. There is no infirmity whatsoever in the execution court directing the Commissioner to rely on Commissioner's report which is part of the records of the case, so submits Mr.Murickan.

4. The contention of the revision petitioner, according to me, is too technical to receive acceptance from this court. As an execution court the court below was expected to make every endeavour to secure for the respondent-decree-holder the fruits of a decree which he had obtained after a long drawn out battle. I do not think that any prejudice will be caused to the respondent by directing the Amin and the Commissioner to rely on Ext.C2 report also. The issue is covered by the judgment of the Supreme Court in **Bhavan Vaja and others**

v. Solanki Hanuji Khodaji Mansang and another (AIR 1972 SC 1372) which was rightly followed by a learned Single Judge of this court in **Kunju Kunju Chandran v. Raghavan** (supra).

The result of the above discussion is that I do not find any warrant for interference. The C.R.P. is accordingly dismissed.

srd **PIUS C.KURIAKOSE, JUDGE**